IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Smt. Shanti Devi
vs.
Anand Kumar and others.

S.B.CIVIL SECOND APPEAL NO.46/2003 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 29.10.2002 PASSED BY SHRI SITA RAM, ADDITIONAL DISTRICT JUDGE NO.2, BIKANER IN APPEAL DECREE NO.42/2002.

DATE OF JUDGMENT ::: 1.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.

Mr. BK Vyas) for the respondents.
Mr. AK Singh)

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BY THE COURT:

Heard learned counsel for the parties.

The appellant is aggrieved against the judgment and decree of the first appellate court dated 29.10.2002 by which the respondents' appeal was allowed and the suit of the plaintiff was dismissed.

Brief facts of the case are that according to the plaintiff, in family settlement dated 5.2.1987, she got the land in dispute. The said land was let out to the defendant no.1 on 1.7.1987 on monthly rent of Rs.425/- per month. The said land was sublet to the defendants no.2 and 3 and the defendants materially altered the suit premises, therefore, the plaintiff sought decree for eviction of his tenant as well as sub-tenants. The plaintiff also pleaded that she needs the suit premises bonafidely. The plaintiff in her plaint very specifically pleaded that not a single penny was paid by the defendant no.1 against the rent to the plaintiff and, therefore, the defendant no.1 has committed default in payment of rent, therefore, on this count alone, she is entitled to decree for possession.

The defendants came up with the case that the defendant no.1 was not the tenant in suit premises and in fact, he was in possession of the suit premises in different position and thereafter, the plaintiff's husband agreed to sell the property in question to the defendant no.1 on 22.3.1971 for which an agreement was executed. The defendant also pleaded that thereafter, the construction was raised by them over the property in dispute.

In support of her case, the plaintiff herself gave her statement and produced witness Durga Dutt, who is her husband's brother.

The trial court decreed the suit of the plaintiff holding that the defendant is tenant. The trial court's decree dated 22.4.2002 was challenged by the tenants by preferring regular first appeal which was allowed by the

first appellate court by impugned judgment and decree dated 29.10.2002. Hence, this second appeal.

According to learned counsel for the appellant, the defendants took a totally vacillating stand and, therefore, the case set up by the defendants regarding their possession by virtue of sale of property by plaintiff's husband cannot be believed. Learned counsel for the appellant vehemently submitted that the defendants admitted the ownership of the plaintiff for the premises in question and their case about their possession by virtue of agreement of sale is false, therefore, they are tenants.

It is also submitted that the document set up by the defendants dated 22.3.1971 itself clearly reveals that on that day, the title was not vesting in the plaintiff or plaintiff's husband, therefore, there could not have arisen any question of title in the defendants in pursuance of the sale of property.

I considered the submissions of learned counsel for the appellant.

It will be worthwhile to mention here that during the pendency of the suit, another agreement was executed by the plaintiff for sale of the property in favour of the defendant no.3.

The first appellate court held that the property was ancestral property and the defendant DW1 Anand Kumar

submitted that the property was belonging to his grand father as it was partitioned on 5.2.1987 and he also admitted that the property was given in the share of the plaintiff. After taking note of this fact, the first appellate court clearly held that the plaintiff failed to prove the relationship of landlord and tenant between the plaintiff and defendant no.1 and observed that there appears to be title dispute or dispute for possession of the property between the co-sharers in the past and, therefore, the suit of the plaintiff for eviction on the plea that the defendant no.1 is tenant is not maintainable for want of relationship of landlord and tenant.

It appears from the facts as pleaded by the plaintiff herself that according to the plaintiff, the suit property was partitioned in the year 1987. Before that in the year 1971, an agreement was executed between the plaintiff's husband and the defendant no.1. The plaintiff herself admitted the signatures of her husband on the said agreement. The plaintiff's sole witness, who is brother of her husband, also admitted the signatures of the plaintiff's husband on the agreement. This agreement was never challenged by the plaintiff in her suit or by filing rejoinder to the written statement. Be that as it may, even if the defence taken by the defendants is totally ignored, then also, for proving the relationship of landlord and tenant between the plaintiff and defendant no.1, there is evidence of the plaintiff and her husband's brother only. Admittedly, there is no rent deed. Admittedly, not a single

penny of rent was paid by the defendant no.1 to the plaintiff and there is only oral evidence which can be well examined and rightly examined by the first appellate court in the light and background of the totality of the facts which are not in dispute, which are in relation to the devolution of the title in the plaintiff in the family settlement. Therefore, the first appellate court very rightly held that the plaintiff failed to prove the relationship of landlord and tenant between the plaintiff and defendant no.1.

The contention of learned counsel for the appellant that since the defendant is in possession of the suit property, therefore, alone, he can be treated as tenant on the basis of her and her witness statements, who is her close relative. Admittedly, that statement on oath has been rebutted by statement on oath.

In view of the above, I do not find any substantial question of law involved in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya